

## **REMARKS**

Applicant has considered all points made by the examining attorney in the Office Action and submits the following supplements to his responses in the same order they were presented before to ensure compliance with the applicable rules.

### **1. 35 U.S.C. § 103 Rejections**

Claims 1, 2, 11, 16 and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over US 2003/0211062 to Laden et al (Laden) in view of 5,997,889 to Durr et al (Durr).

Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over KR 149428 (KR).

#### **a. Claim 1**

The Examiner cites Laden for its teaching of anhydrous skin cleansers comprising emollient oils, emulsifying agents, substantially crystalline abrasive materials and other additives such as tocopherol and fragrances. In particular, the Examiner relies on Laden's teaching of crystalline abrasive at a concentration of 1 – 60% with a particle size of between 50 to 1000 microns, which, in the Examiner's view, makes obvious the claimed concentration of greater than 50% processed dead sea minerals. Applicant respectfully disagrees with the characterization of the claimed ranges as obvious because Applicant believes that Applicant has achieved unexpected advantages with specific concentrations above 50%.

Applicant also traverses the rejection on the basis that Laden is not, in fact, available as a prior art reference for the above teachings. Laden derives its priority date from provisional application 60/202,409 filed May 8, 2000. Importantly, this provisional does not teach a crystalline abrasive concentration of 1 – 60% or particle sizes of 50 to 1000 microns. For example, in the '409 Provisional, Laden includes an exemplary formulation with only 30.4% Dead Sea salts, with no particle size specified. (Laden Provisional, p. 2 Formula 2.) And in the '409 claims, Laden teaches only a dead sea salt composition of 1 – 50% with no particle size specified. (Laden Provisional, p. 4, claims 5 – 6.)

It is not until the filing of PCT/US01/14570 filed May 7, 2001 that Laden teaches the crystalline abrasive concentration of 1 – 60% with particle sizes of 50 to 1000 microns. Although PCT '570

was filed earlier than Applicant's earliest priority date of Aug. 16, 2001, Applicant has provided a Declaration and supporting documents in accordance with 37 C.F.R. § 1.131 demonstrating that Applicant had reduced the invention to practice before May 7, 2001 (the earliest possible date that Laden's foreign activities are available as a reference under 35 U.S.C. § 102(e)). For example, the manufacturing batch record for Feb. 2, 2001 shows a production batch of a cosmetic employing the present invention. Page 3 of this record shows a processed ultra-fine dead sea salt concentration of 51.00%. Applicant respectfully submits that the declaration and showing of facts are such, in character and weight, as to establish reduction to practice prior to the effective date of the '570 PCT in accordance with 37 C.F.R. 1.131(b) and MPEP § 715.

In view of this affidavit, the only Laden application available as a prior art reference is the '409 provisional. Because '409 teaches only a concentration of 1 to 50%, there is no overlap with Applicant's claimed range of greater than 50%. In fact, by teaching only the range of 1 to 50%, '409 tends to lead away from the claimed range of greater than 50%. So Laden does not render the claimed range obvious, and Applicant respectfully requests examiner to withdraw the rejection.

Applicant has also amended claim 1 to enhance its clarity, to include a new limitation drawn to the particle size, and to re-capture some scope that Applicant had previously unnecessarily surrendered to overcome the Laden reference. Applicant respectfully believes that because Applicant has now sworn behind the Laden reference, and because the Examiner rejected even the narrower claim before Applicant's 1.131 Declaration, the purpose of the narrowing amendment is now altogether moot and that the initial scope more properly claims the invention in this regard. With these changes and in light of Applicants 37 C.F.R. § 1.1.31 declaration, Applicant respectfully submits that claim 1 is now in condition for allowance.

**b. Claims 2, 11 and 16.**

Applicant respectfully submits that claims 2, 11 and 16 are allowable because they are dependent upon claim 1, which is allowable as discussed above.

**c. Claim 18**

Because Applicant's invention pre-dates Laden's '409 provisional, '409 also cannot be used against claim 18. For example, '409 does not teach a specific particle size in the provisional, and instead

discloses a “mixture” of Dead Sea salts. This reference “must considered in its entirety, including portions that would lead away from the claimed invention.” (MPEP § 2141.02 VI). By expressly teaching a “mixture” of Dead Sea salts without providing additional alternatives, the ‘409 provisional actually tends to lead one away from the use of uniform-granularity salts. It is not until PCT ‘570 that Laden teaches granularity that fits in the claimed range, and ‘570 is not available as a reference in light of Applicants 37 C.F.R. § 1.131 Declaration.

With respect to the KR reference, Applicant respectfully stands on the arguments of the previous response, including Applicant’s commissioning of a study intended to prove the unexpected benefit of the specific uniform granularity of the claimed invention over the range of granularity described in KR.

In light of the above, Applicant respectfully submits that Claim 1 is allowable because Applicant’s invention pre-dates the ‘409 provisional. Applicant further submits that claims 2, 11 and 16, all of which depend on claim 1, are also allowable. Finally, Applicant respectfully submits that claim 18 is allowable over both KR and Laden. Applicant therefore requests that Examiner withdraw the rejections under 35 U.S.C. § 103.

### CONCLUSION


The Applicant requests a telephone call if there are any problems associated with this Response, as this Response is believed to put the case in condition for allowance.

At this time and in view of Applicant's amendments and arguments set forth above, it is respectfully submitted that all pending claims are allowable, and a Notice of Allowance is respectfully requested.

Respectfully submitted,

JACKSON WALKER, L.L.P.  
112 E. Pecan, Suite 2400  
San Antonio, TX 78205  
(210) 978-7700  
(210) 978-7790

By



Mark H. Miller  
Reg. No. 29,197